

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE CITY OF NEW YORK, AS
OWNER AND OPERATOR OF THE
M/V ANDREW J. BARBERI,

REPORT AND RECOMMENDATION

CV-03-6049 (ERK)(VVP)

STANLEY MASON, CLAIMANT.
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I recommend that the claims made by the claimant Stanley Mason in this proceeding be dismissed with prejudice as he has abandoned them. As set forth in the moving papers by his former counsel in their application for leave to withdraw, the claimant's attorneys have attempted to contact Mason on numerous occasions since December 2003 at the telephone numbers and at the address he provided to them. Since December 2004, they have attempted to obtain his compliance with discovery requests as well as his appearance at depositions noticed by the City. Mason has failed to respond to those attempts to contact him and failed to appear for his deposition despite being warned that he was required to appear by court order.

In response to counsel's motion to withdraw, the court issued an Order to Show Cause to Mason requiring that he appear before the court at a hearing on November 15, 2006. Mason's counsel served copies of the Order to Show Cause at the last known address provided by Mason (the address of his mother), and has filed proof of such service in the record. The Order stated that Mason was required to appear in person at the hearing and warned him, in boldface type, that a failure to appear in response to the Order to Show Cause would result in dismissal of his claims. Nevertheless Mason failed to appear.

At the hearing on the Order to Show Cause, a transcript of which is filed in the record, Mason's counsel informed the court that he had been in touch with Mason's mother on several occasions over the course of their representation, and had spoken to her as recently as November 3, 2006 in an effort to make contact with Mason. Mason's mother has repeatedly refused to provide counsel with any contact information, but assured counsel that she would pass on the messages that his counsel had communicated to her. On more than one occasion when counsel spoke to Mason's mother, she has informed counsel that Mason did not want to proceed with the action.

In view of the foregoing, I conclude that Mason has abandoned his claims and therefore recommend that they be dismissed with prejudice.

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Any objections to the Report and Recommendation above must be filed with the Clerk of the Court within 10 days of receipt of this report. Failure to file objections within the specified time waives the right to appeal any judgment or order entered by the District Court in reliance on this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see, e.g., Thomas v. Arn*, 474 U.S. 140, 155, 106 S.Ct. 466, 474, 88 L.Ed.2d 435 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298 (2d Cir.), *cert. denied*, 113 S. Ct. 825 (1992); *Small v. Secretary of Health and Human Serv.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
November 28, 2006